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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,419	09/16/2003	Abraham Jacob Sacks	030801	2708
7590 06/07/2004				
George S. Levy 3980 Del Mar Meadows San Diego, CA 92130-2258				
			EXAMINER HORTON, YVONNE MICHELE	
			ART UNIT 3635	PAPER NUMBER

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,419

Applicant(s)

SACKS ET AL.

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/3/04
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

In claim 1, line 20, --the -- should be inserted before "tip".

In claims 7 and 12, it is not clear which "longitudinal strand has a shaped cross-section, the "primary" longitudinal strands or the "secondary" longitudinal strands? Clarification is required.

Regarding claim 18, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no support in the specification for the sides of the spacing furs having an angle of inclination between 20 degrees and 50 degrees. The specification only details that the angle of inclination can be 45 degrees or less.

The disclosure is objected to because of the following informalities: On page 9, the last line. One of the periods at the end of the sentence needs to be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,7,12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,540,023 to JAENSON. JAENSON discloses the use of a welded wire lathe (39) including a plurality of spaced-apart, approximately parallel transverse strands (48) substantially located in a first plane; a plurality of spaced apart, approximately parallel primary longitudinal strands (50,56) also substantially located in said first plane, intersecting and in contact with said transverse strands (48), a plurality of secondary longitudinal strands (60,62) also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands (50,56), thus forming pairs of longitudinal strands (60,62), column 7, lines 27-28, said pairs (60,62) defining a plurality of longitudinal slots (the space between the pairs (60,62)) located at predetermined spaced intervals extending across said lathing material, said plurality of transverse (48) and longitudinal strands (50,56) welded together at their points of intersections (column 6, lines 42 and 46-47), and forming a plurality of rectangular meshes approximately located in said first plane; and a plurality of spacing furls (52) formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands (48), said spacing furls situated between said longitudinal strands (50), tip of said indentations defining a second plane away from said first plane. Regarding claim 7, the longitudinal strands (50,56) and (60,62) have a shaped cross-section profile. In

reference to claim 12, the transverse strands (48) are in the vertical direction and said longitudinal strands (50,56) are in the horizontal direction, column 6, lines 10 and 11. Regarding claim 13, the strands (48), (50,56) and (60,62) are galvanized steel, column 6, lines 15-17.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2-6,8-10,11 and 14 -17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,540,023 to JAENSON. JAENSON discloses the basic claimed lathing material as detailed above, except for the use of fasteners, except for explicitly disclosing that his material can be rolled, except for explicitly disclosing the cross-section of the strands, except for disclosing an angle of inclination of the sides of the spacing furr, and except for disclosing a dimension that the spacing furr extend from the first plane. In reference to claim 2, JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured only by an adhesive. Regarding claim 3, JAENSON also does not disclose that his lathing material can be rolled. He does however, disclose that his material is flexible. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the mesh-like material of JAENSON, being flexible, is capable of being rolled. Mesh screen made from galvanized steel are very well know for their ability to be rolled and unrolled. Having the ability to be wound into rolls allows the material to be compact and provides

for an ease of shipping and storage. In reference to claims 4-6 and 9, JAENSON does not disclose a specific cross-sectional dimension for his strands. He does however, detail that his strands can be 16-gauge steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the selection of the cross-section dimension of the strands would be an obvious matter of design choice suitable for the use intended. For instance, if a more rigid lathing is desired a larger sized cross-sectional dimension would be needed; whereas, if a less rigid lathing were required, a smaller cross-sectional dimension would be needed. In further regards to claims 4 and 5, JAENSON discloses a grid spacing of 2 inches, column 6, line 13. He does not; however disclose a grid spacing from 1.4-1.6 inches. Again, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the grid spacing as an obvious matter of design choice suitable for the use intended. A grid having smaller spacing might be more rigid or firm; whereas, a grid having larger spacing might be a bit less rigid. In reference to claims 8 and 17, although JAENSON does not disclose the use of a flattened cross-sectional shape strand, the applicant has not shown any criticality for a shaped cross-sectional shape strand over a flattened cross-section shape strand. Hence, the selection of either would have been well within the general skill of a worker in the art. Regarding claims 10 and 11, JAENSON does not detail an angle of inclination of the sides of the spacing furr. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle of inclination suitable for the use intended as an obvious matter of design choice. For instance, a larger angle of inclination allows the

lathing to be positioned more evenly and securely against a supporting structure; whereas a smaller sized angle creates a sharper or less flattened area that is placed against the supporting surface. The sharper area is not as stable as the more flattened are created by the larger angle of inclination of the sides of the spacing furs.

In reference to claim 14, JAENSON does not detail how far the spacing furs extend from the first plane. However, again, this is an obvious matter of design choice that would depend upon the desired strength of the lathing and how the lathing is intended to be used. Regarding claim 15, JAENSON discloses the basic claimed lathing as detailed above for claim 1, except for the use of fasteners. JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured only by an adhesive. In reference to claim 16, the longitudinal strands (50,56) and (60,62) have a shaped cross-section profile.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,540,023 to JAENSON. JAENSON inherently discloses the method Of fabricating a building wall using welded wire lathe (10) including the steps of arranging a plurality transverse strands (48); arranging a plurality of parallel primary


longitudinal strands (50,56); arranging a plurality of secondary strands to form pairs (60,62) having slots therebetween; welded the longitudinal (50,56) and (60,62) strands to the transverse strands (48), column 6, lines 42 and 46-47 to form a mesh; and forming a plurality of spacing furls (52) by bending the transverse strands (48). JAENSON discloses the basic claimed method except for the use of fasteners. JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured only by an adhesive.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH   
May 31, 2004